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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,164	06/19/2003	Sudeep M. Kumar	090900-0158	9722
26371 7590 01/09/2009 FOLEY & LARDNER LLP 777 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202-5306				
EXAMINER				
TURK, NEIL N				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
01/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/600,164	Applicant(s) KUMAR ET AL.
Examiner NEIL TURK	Art Unit 1797

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 62-64.
Claim(s) objected to: _____.
Claim(s) rejected: 1-6, 8, 10-23, 25-27, 29-40 and 42-58.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 12/22/08
13. ☐ Other: _____.

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797

Continuation of 3. NOTE: The amendments made to claims 1, 2, 25, 37, and 38 would require further consideration. Further, amendments made to claim 37 provide an issue of new matter with respect to the claimed weight percents of platinum in combination with a generic second weight percent of iridium.

Continuation of 11. does NOT place the application in condition for allowance because: of arguments of record. Further, Examiner notes that the amendments made to independent claims 1 and 37 do not coincide with the Examiner's notes made in the Final Rejection mailed on 10/28/08. As noted in the Final Rejection, claims 1-6,8,10-23,25-27,29-40 and 42-58 were maintained rejected over the prior as discussed therein. Further, it was noted in the Final Rejection that Applicant's arguments of unexpected results over claims 1-6,8,10-23,25-27,29-40 and 42-58 were not commensurate in scope with the claims. Examiner noted that Applicant had provided probative evidence to Pt-10%Ir, Pt-20%Ir, and Pt-30%Ir alloys, and thereby was given probative evidence to unexpected results for platinum alloyed with 10-30%Ir (i.e. 90 to 70% Pt with corresponding 10 to 30%Ir). However, currently, independent claim 1 does not recite such Pt-Ir alloys. Claim 1 recites a second weight percent of iridium being from 10 to 30%, and where the platinum is present at a first weight percent being greater than 0. This claim does not provide for Pt-Ir alloys, wherein the platinum is alloyed with Ir in the range of 10-30%, as claim 1 provides for other elements to be present. Additionally and likewise, claim 37 presents limitations that do not coincide with Examiner's notes made in the final rejection. The limitations of claim 37 do not provide for Pt-Ir alloy electrodes, in which platinum is alloyed with iridium by 10-30%. Further, these limitations present an issue of new matter, as claim 37 provides that the weight percent of platinum is in the range of 10 to 30%, with a generic second predetermined weight of iridium. Further, the limitations of claim 38 are unclear in constitution with claim 37.